

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.466 of 2018
and
C.M.P.No.11894 of 2018

Rajeswari ..Appellant/ Defendant

Vs.

T.Kannan ..Respondent/ Plaintiff

Appeals under Section 96 read with Order XLI Rule I of Code of Civil Procedure, against the Judgment and Decree dated 08.02.2018 on the file of the III Additional District and Sessions Judge, Coimbatore passed in O.S.No.48 of 2013.

For Appellant : M/s.I.Abrar MD Abdullah

For Respondent : Mr.N.Nithianandam
For Mr.A.Saranraj

JUDGMENT

The appeal suit is filed against the judgment and decree passed in O.S.No.48 of 2013 dated 08.02.2018.

2. The defendant is the appellant in the appeal suit and the respondent plaintiff instituted a suit for Specific Performance based on the suit sale agreement dated 14.11.2012.

3. The facts in nutshell as narrated in the plaint are that the defendant is the absolute owner of the suit property and the said property was acquired by her vide a Deed of Settlement dated 27.04.2006 registered in Document No.1921 of 2006 on the file of SRO, Thondamuthur. The total sale consideration agreed between the parties was Rs.12,00,000/- (Rupees Twelve Lakh only), out of which, an advance amount of Rs.9,00,000/- (Rupees Nine Lakh only) was paid on the date of agreement. The time stipulated for the performance of the agreement was one month. The plaintiff stated that he was ready

and willing to perform his part of the contract by paying the balance sale consideration of Rs.3,00,000/- (Rupees Three Lakh only) and he approached the defendant repeatedly for execution of the sale deed on receipt of the balance sale consideration and she was evading her part of the performance. In view of the attitude of the defendant, in performing her part of the contract, the plaintiff issued a notice and thereafter instituted the suit for Specific Performance.

4. The defendant disputed the contentions by stating that the plaintiff is a total stranger to her and no such suit sale agreement was entered into between the plaintiff and the defendant. It is contended that she had borrowed a sum of Rs.8,00,000/- (Rupees Eight Lakh only) from one Mr.Selvan, residing at Alamelu Mangai Avenue, Thondamuthur, Coimbatore, who was known to the defendant and who was being money lending business. He agreed to lend a sum and obtained defendant's signature on blank papers and stamp papers and also took the original settlement deed in the name of the defendant as repayment of said loan amount of Rs.8,00,000/-. The defendant has stated that she had already repaid a sum of Rs.6,75,000/- (Rupees Six Lakh Seventy Five Thousand only) out of the borrowed loan amount of Rs.8,00,000/-. Mr.Selvan, with a mala fide intention to grab the suit property, created a false sale agreement in favour of the plaintiff and instituted the suit for Specific Performance. It is stated that the suit schedule property is situated in the heart of the city, measuring 9 cents 223 sq. feet and the market value is about Rs.1 crore.

5. It is contended that the defendant would settle the balance loan amount of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only) along with the interest to Mr.Selvan and Mr.Selvan demanded a sum of Rs.12,00,000/- (Rupees Twelve Lakh only) and therefore, the defendant lodged a police complaint on 10.05.2013 before the Inspector of Police, Land Grabbing Section, Coimbatore for action against Mr.Selvan and the plaintiff.

6. The trial Court framed the issues, Whether the sale agreement 14.11.2002 is true valid and binding upon the plaintiff; Whether the plaintiff is entitled for the relief of specific performance and to what other relief the plaintiff is entitled for?

7. The plaintiff has examined himself as PW1 and had marked Ex.A1 to Ex.A4. The defendant had examined herself as DW1 besides examining her sister's son Sasikumar as DW2 and one R.Duraisamy as DW3. Ex.B1 to Ex.B5 had been marked on the side of the defendant.

8. With reference to Issue No.1, the trial Court found that the signature in the suit sale agreement (Ex.A1) had not been denied by the defendant. The claim of the defendant is that she signed blank papers and blank stamp papers and handed over the same to one Selvan from whom, she had borrowed loan, had misused the said blank signatures and created the suit sale agreement in the name of the plaintiff and instituted the suit. Thus, the defendant claimed that the papers in Ex.A1 had been prepared after obtained signature from the defendant. In the proof affidavit filed as DW1, the defendant would claim that on 12.11.2012, she and her sister Kalaiselvi had borrowed Rs.8 lakhs from Selvan @ Gnanaselvan for 10% interest. The lender demanded cheques and title deeds as security for the amount and that, as she did not have cheque facility, he demanded, blank signed cheque from Kalaiselvi and one Duraisamy, their family friend.

9. At the outset, it is contended that the defendants signed in the blank papers and that had been misused by Mr.Selvan and it the sale agreement was prepared in the name of the plaintiff. DW1 would abandon even this claim made in the proof affidavit when she was cross examined. Contrary to what she had stated in the proof affidavit and the plaint, she would claim that she did not borrow any money from Selvan @ Gnanaselvam and that it was only her sister Kalaiselvi, who borrowed the money. The trial Court found that the defendant has made contradictory statements both in the written statement and during the cross examination. The contradictions both in the written statement as well as in the depositions, made the trial Court to arrive a conclusion that the case of the defendant is false and consequently, granted the relief of Specific Performance in favour of the plaintiff. Such contradictions are the findings made in the trial Court during discussion with reference to Issue No.1. The deposition of DW1, DW2 and DW3 are contradictory and not with reference to the written statements filed by the defendant.

10. The learned counsel appearing on behalf of the respondent plaintiff also pointed out that the defense taken during the evidence, had not been pleaded in the written statement and therefore, the trial Court had rightly rejected the defense taken at the time of filing proof affidavit and taking evidence.

11. It is contended that the defense taken in the written statement is unconnected with the deposition made during the written examination and cross examination and under those circumstances, the trial Court rightly arrived a conclusion that the case of the defendant is false and consequently, decreed the suit in favour of the plaintiff.

12. The learned counsel appearing on behalf of the appellant reiterated that the evidence of DW1, DW2 and DW3 are to be relied upon for the purpose of granting the relief of Specific Performance. The relief being a discretionary one, the trial Court ought to have considered even the contradictions and rejected the suit. Contrarily, the trial Court has believed the statement of the plaintiff and negatived the defense merely on the ground, certain contradictions are found both in the written statement as well as in the cross examination. In rural areas, such contradictions are common and what is pleaded may be distinguished and at the outset, the suit sale agreement was prepared for the purpose of keeping the same as a security in lieu of the loan borrowed by the defendants. At no point of time, the defendant had intended to sell the suit mentioned property. The sale consideration itself would reveal that no prudent man will sell such a valuable property for a meager sale consideration of Rs.12,00,000/-. The description of the suit schedule property set out in the plaint itself would reveal that the property is situated in the outskirts of Coimbatore City and therefore, the sale consideration fixed in the suit sale agreement is not in commensuration with the market value of the property prevailing in that locality and therefore, in the event of executing the sale, the same would create an inequality with reference to the claim of the defendant. The description of the property reveals that the suit property is measuring about 9 cents and 233 sq. feet and situates in the main location, more specifically, in Coimbatore-Marudhamalai Road.

13. Admittedly, the total sale consideration is Rs.12 lakh, an advance amount of Rs.9 lakh was paid at the time of suit sale agreement. This being the factum, the trial Court has not considered these basic aspects, while granting the discretionary relief of Specific Performance. The trial Court approached the case of the plaintiff on the ground that the signature in the suit sale agreement is not disputed and when the agreement itself is admitted, then the plaintiff is entitled for the relief of Specific Performance.

14. The learned counsel appearing on behalf of the respondent also reiterated that when the suit sale agreement is true and genuine and the plaintiff has established the readiness and willingness and the parties are also unable to dispute the signature, then the trial Court is right in granting the relief of Specific Performance and all the requirements for the purpose of grant of relief of Specific Performance had been complied with and therefore, the trial Court judgment is in accordance with law and there is no perversity as such.

15. Undoubtedly, plaintiff as well as the defendant had admitted the signatures in the suit sale agreement. Admittedly, the total sale consideration fixed is Rs.12 lakhs. Admittedly, the advance amount of Rs.9 lakh received by the defendant is also a true one. However, the fact remains that the suit schedule property is situated in the outskirts of Coimbatore city and the market value of the suit property is far higher than the total sale consideration fixed in the suit sale agreement. It cannot be disputed that the value of the property is higher than that of the total sale consideration agreed upon.

16. This being the factum, this Court is having a doubt with reference to the intention of the parties to execute the sale with reference to the suit schedule property. Beyond all the requirements to be complied with for grant of relief of Specific Performance, the intention of the parties to sell the property is also to be considered by the Court. In the event of not considering such an intention of the owner of the suit property to sell the property, then the same would create an inequality in the matter of granting the relief and the relief of Specific Performance being discretionary relief, the Courts are bound to consider all these factual aspects, including the intention of the parties regarding the sale of a suit schedule property.

17. No prudent man will sell such a valuable property for a meager sale consideration of Rs.12,00,000/- (Rupees Twelve Lakh only). It is contended that the property is worth about Rs.1,00,00,000/- (Rupees One Crore only) and admittedly, the sale consideration is Rs.12 lakhs and the advance amount paid is Rs.9,00,000/- (Rupees Nine Lakh only). In the event of granting the relief of Specific Performance, this Court is of an undoubted opinion that the same would cause an inequality as far as the defendant, who is the owner of the property is concerned.

18. In this regard, this Court would like to cite the judgment of the Hon'ble Supreme Court of India in the case of Surinder Kaur v. Bahadur Singh, reported in 2019 (8) SCC 575 and the relevant paragraph 14 is extracted hereunder:

"14. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff."

19. Applying the above principle, it is not as if the parties could able to establish the genuinity of the suit sale agreement and their readiness and willingness to perform the remaining performance of the contract. But the Courts are bound to find out whether the parties have intended to execute the sale or such agreements are signed in lieu of certain loan transaction or as a security for other purposes. If the Court has got any doubt in its mind regarding such transactions, then it would be better not to grant the relief of Specific Performance, but to grant the alternate relief of refund of advance with interest, which would be equitable in the interest

of justice and by considering the alternate relief, no party would be prejudiced.

20. This being the principles to be considered, with reference to the facts of the case on hand, when a valuable property worth about Rs.1 crore is sought to be sold for a meager amount of Rs.12,00,000/- (Rupees Twelve Lakh only), then naturally a doubt would arise that whether the defendant had intended to sell the property or signed for the purpose of creating a security irrespective of other contradictory statements made in order to defend the case. Irrespective of the fact that the parties have pleaded in a different manner, this Court is bound to consider the basic principles regarding the grant of relief of Specific Performance to the plaintiff. Under these circumstances, this Court is able to arrive a conclusion that the appellant defendant had not intended to sell the property in favour of the respondent defendant and the suit sale agreement was signed between the parties in lieu of the loan borrowed and as a security. However, the appellant defendants is liable to refund the entire advance amount with interest.

21. The learned counsel for the appellant defendant solicited the attention of this Court regarding Section 17 of the Specific Relief Act, wherein a Contract to sell or let property by one who has no title, not specifically enforceable.

22. As far as the present case on hand is concerned, the learned counsel for the appellant has stated that the defendant is not the owner of the entire property mentioned in the plaint and a portion of the property had already been sold by her mother to a third party and therefore, the contract is unenforceable under Section 17 of the Specific Relief Act.

23. Accordingly, the judgment and decree dated 08.02.2018 passed in O.S.No.48 of 2013 is quashed. The appellant / defendant is directed to refund the advance amount of Rs.9,00,000/- (Rupees Nine Lakh only) along with interest at the rate of 10% per annum from the date of plaint till the date of decree passed in O.S.No.48 of 2013 and thereafter, 6% per annum till the date of realisation. The appellant / defendant is directed to settle the advance amount with interest as stated above, within a period of four months from the date of receipt of a copy of this judgment.

24. Consequently, the appeal suit in A.S.No.466 of 2018 stands allowed in part. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AD I(mdu))

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District
and Sessions Judge,
Coimbatore.

2. The Section Officer
VR Section,
High Court, Madras

1 cc to MR.A.Saranraj, Advocate, Sr. 11168

1 cc to Mr.Abrar MD Abdullah, Advocate, Sr. 11238

A.S.No.466 of 2018

RV (CO)
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